



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201252025**
Release Date: 12/28/2012

Date: October 2, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:
All Years

UIL: 501.03-08; 501.33-00; 501.36-03

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: August 13, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = Applicant
C = State
F = President/Founder
H = Individual
b = Year
c = Date
e = Year
f = Year
g = Year

UIL;
501.03-08
501.33-00
501.36-03

Dear

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) of the Code. Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

Issues

1. Do your activities of publishing and promoting literary works constitute a commercial activity and therefore cause you to fail the operational test for exemption under section 501(c)(3) of the Code? Yes, for the reasons stated below.
2. Are you operating to primarily serve the private interests of your founder, F? Yes, for the reasons stated below.

Facts

F has operated a publishing business as a sole proprietorship in a commercial manner since b. In order to apply for grants and continue the work of F, you (B) were incorporated in the state of C on c.

Your articles of incorporation provide for publishing and writing motion picture manuscripts, music, books and poetry and to engage in any lawful activity for which nonprofit corporations may be organized under General Corporation Law. Provisions within your articles of incorporation require that directors submit a proposal of officers to be approved by the shareholders. Your articles of incorporation give you "the power to negotiate within the trading market for invested capital accompanied by dividends to benefit shareholders."

Your by-laws consist of one unsigned page and state "It is our primary duty to publish moral literary writing materials for motion picture cinema, poetry, music and books. It is also our goal to raise funds in order to purchase film and playwright production resources, studio equipments, computer equipments, office supply resources and etc." You indicated through the bylaws an intent to publicize and market distributions of your resources.

The bylaws list F as board president/executive director and fundraising committee. A second individual is listed as the secretary-treasurer. Information later submitted listed your board of directors as F and 3 other members, one of which was described as a volunteer helping to distribute donations and not participating in decision making. Therefore, you have a three person decision making body including F and two other individuals. All correspondence during the application process has been signed by F. During processing, we asked for signatures of the other two board members verifying their participation in the decision making process for your organization. Their signatures were not provided.

Your application for exemption was also completed and signed by F. The activity description submitted states:

B is owned and operated by F. I write and publish cinema, books, poetry, and music & etc. Thus far, and since the year of f, I have written six movies, two books, two poems, nine songs, and we have performed theatric plays.....including children.

In addition to that, we have released Christmas CD's in g, in which are publicly admired and in which played and performed around the global [sic]. Furthermore, much of our 'writing ideas' are still continuously played and performed around the global [sic]. However, our royalties are not yet

accomplished, but will be in the near future.

Yet, our primary goal is to continue to educate peoples on how to share their creative writing talents for cinema, books, poetry, and music. We will also continue to donate our resources to charity!

On schedule E of the application, you indicated that you expect significant changes in your sources of support in the future. You further stated, "I attend [sic] to receive royalties from my written literature in the future after receiving to [sic] 501(c)(3) which is required in order to receive any grant funds."

You submitted a sample screenplay writer publishing contract. The contract looks very similar to a commercial contract and lists you as the publisher. Language in the contract states that you will promote and publicize the writer's manuscripts for distribution and sale. After publication, you will ensure registered copyright, sue infringers, negotiate settlements, and return a royalty to the writer for each manuscript sold.

During the processing of your application, you submitted more details regarding your activities. You indicated you would educate people how to share their writing talents in cinema, books, music and poetry and also would donate resources to charity. You stated 10% of the profits would be donated to charity. You acknowledged the company was affiliated with several radio and television broadcasting stations. You also stated, "our primary goal is to communicate with film producers and/or to publicize and promote written screenplays". You referred to F as your owner and writer.

A newspaper article you submitted explains that a Christmas CD was released by F and her husband and published through "their business," B.

Although you have been operating for several years, you were unable to provide past financial data. You stated the paperwork had been discarded. You also did not submit financial operating budgets for the next two years as requested. In addition when we requested you distinguish yourself from a commercial publisher, no response was given.

You indicated the public would be educated as a result of your travels to research historical literature pertinent to H and other patriotic historians. You indicated you will "educate the public about non violence". Finally, you stated you will educate people how to share their writing talents in cinema, books, music and poetry. However, no information was given to explain how you will carry out these programs.

Law

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational and other purposes, provided that no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("Regulations") provides that in order to qualify for exemption, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either of the above tests, the organization will not qualify for exemption.

Section 1.501(c)(3)-1(c)(2) of the Income Tax Regulations provides that if an organization's net earnings inure in whole or in part to the benefit of a private individual, then that organization is not operated exclusively for exempt purposes.

Rev. Rul. 67-4, 1967-1 CB 121

This ruling recognizes four criteria indicating that publishing activities are directed to the attainment of purposes specified in IRC 501(c)(3). These criteria are: (1) The content of the publication must be "educational"; (2) The preparation of materials must follow methods generally accepted as "educational" in character; (3) The distribution of the materials must be necessary or valuable in achieving the organization's exempt purpose; and (4) The manner in which the distribution is accomplished must be distinguishable from ordinary commercial publishing practices.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court held that an organization did not qualify for exemption under section 501(c)(3) of the Code because it was primarily engaged in an activity that was characteristic of a trade or business and ordinarily carried on by for-profit commercial businesses. The Tax Court stated: "We must agree with the Commissioner that petitioner's activity constitutes the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit."

Salvation Navy Inc. Petitioner vs. Commissioner of Internal Revenue Respondent T.C. Memo 2002-275 U.S. Tax Ct., 2002 October 30, 2002

This is an organization that requested exemption conducting a purpose to "find out where one goes when he or she leaves". The organization conducts charitable activity that is performed on a volunteer basis by the founder and Director of the organization. The charitable purpose of Salvation Navy is to be an asset to the community and do good deeds. The question in this case was whether or not the organization or the director was conducting charitable activity. Based on the fact all income ultimately inured to the benefit of the director and the director conducted activity in their own name there was no way to establish the organization was the entity conducting the activity.

The court stated "Section 501(c)(3) provides for tax-exempt status for corporations, ... organized and operated exclusively for, among other things, charitable purposes. It does not provide exemption for an individual engaged in various activities, charitable or otherwise. Insofar as can be ascertained from the administrative record, the director engaged in various commendable activities-perhaps sometimes in the name of the organization – but the activity was that of the director, not the organization.

In Old Dominion Box Co. v. United States, 477 F2d 344 (4th Cir. 1973) cert. Denied 413 U.S. 910 (1973) the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

Application of Law

You are not described under Section 501(c)(3) of the Code because you are not organized and operated exclusively for charitable or educational purposes. Also, your net earnings inure to the benefit of private shareholders and individuals.

You do not meet the requirements of section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations because you have failed to provide evidence that you are operated for charitable and educational purposes.

You do not meet the requirements described in section 1.501(c)(3)-1(c)(2) of the Regulations because your net earnings inure to the benefit of private shareholders or individuals. Although you failed to provide specific financial data, it is evident that your earnings are benefitting F. You incorporated to take over the commercial activities that were conducted by F as a sole proprietor using an assumed name identical to yours prior to your existence. You indicated this was done so grant funding could be obtained. Furthermore, your application shows that you have a substantial purpose of promoting the personal works of F. In fact, it appears F considers herself to be your owner. Throughout the application process, F has referred to you as "my business" and calls herself your owner.

You do not meet the four criteria set forth in Rev. Rul. 67-4, 1967-1 CB 121. The items you publish do not meet the first requirement of being educational. Evidence in the file shows you have published works such as a Christmas CD, screenplays, and books, none of which are educational. Likewise, your activities are not consistent with requirements 2, 3, or 4 of this ruling. Specifically, the manner in which you distribute your materials is conducted in a commercial manner. This is evidenced by the commercial contracts you enter offering your services to market individual literary work to publishers around the country. The individual writers were encouraged to transfer copyright protection to you in return for predetermined royalty consideration on each literary work you sold.

Your contracts were drawn up in a for-profit, commercial manner much like those described in B.S.W. Goup Inc. v. Commissioner, 70 T.C. 352(1978). Even if your

activities did not substantially benefit F, your entire operation is conducted in a commercial manner. Your sample contract shows that you will promote and publicize the writer's manuscripts for distribution and sale. After publication, you will ensure registered copyright, sue infringers, negotiate settlements, and return a royalty to the writer for each manuscript sold. This is identical to the operation of a commercial publishing company. Evidence that this has actually occurred was submitted by you in the form of a newspaper article that explained how you were promoting and selling the Christmas CD of F and her husband at a market rate.

You are similar to the organization described in Salvation Navy Inc. Petitioner vs. Commissioner of Internal Revenue Respondent T.C. Memo 2002-275 U.S. Tax Ct., 2002 October 30, 2002. You have the same name of the sole proprietorship created by F. F signed Form 1023 and all correspondence related to the application as owner. Furthermore, a clear distinction was not made between the activities of you, F, and the prior sole proprietorship operated by F. Nothing in the file indicates other board members will take an active part in governing of the organization.

You are like the organization in Old Dominion Box Co. v. United States, 477 F2d 344 (4th Cir. 1973) cert. Denied 413 U.S. 910 (1973) because you are operating for the benefit of F. This is substantiated by the fact that you market and sell the products and books created by F, with F receiving royalties as a result of the sale. Since F is also your founder and president, this constitutes inurement.

Applicant's Position

You did not provide a written statement describing your position or how you planned to operate in detail.

Conclusion

The facts and applicable law, as stated above, show you fail the operational test because your publishing activities are conducted in a commercial manner. Furthermore, these commercial publishing activities inure to the benefit of your founder and president, F, by promoting her personal works.

Accordingly, you are not exempt under section 501(c)(3) of the Code.

Contributions to you are not deductible under section 170 of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects

our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the

District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892